

## II. REMARKS

In the Office Action, the Examiner has issued a restriction requirement directed to species and to sub-species. In response, Applicant elects species V sub-specie A with traverse. This election corresponds to claims 1, 65, 66, and new claims 116 and 117 (see discussion below).

Respectfully, the restriction requirement is believed to be improper, and reconsideration is requested.

First, the restriction requirement is believed to be improper pursuant to 35 U.S.C. Sec. 132 which requires "the reasons for such requirement ... *together with such information as may be useful in judging the propriety of continuing prosecution...*". If the restriction requirement is maintained, Applicant respectfully requests (1) the reasons and (2) the information, both of which are required by 35 U.S.C. Sec. 132.

Second, 35 USC Sec. 121 applies to inventions that are separate and distinct. The Office Action does not contend or properly establish that any of the species is separate and distinct and has separate utility, as is required pursuant to MPEP Sec. 802.

Third, The Office Action does not contend or properly establish that any of the sub-species is separate and distinct and has separate utility, as is required pursuant to MPEP Sec. 802.

The MPEP states:

### **808.01 Reasons for Holding of Independence or Distinctness**

The particular reasons relied on by the examiner for holding that the inventions as claimed are either independent or distinct should be concisely stated. A mere statement of conclusion is inadequate. The reasons upon which the conclusion is based should be given.

For example, relative to a combination and a subcombination thereof, the examiner should point out the reasons why he or she considers the subcombination to have utility by itself or in other combinations, and why he or she considers that the combination as claimed does not require the particulars of the subcombination as claimed.

Each relationship of claimed inventions should be similarly treated and the reasons for the conclusions of distinctness or independence set forth.

The restriction requirement in the Office Action does not comply with this section of the MPEP.

Fourth, even if the species and sub-species are each established as separate and distinct, there is "a serious burden on the Examiner if restriction is required (see MPEP. Section 803.02, Section 806.04(a) - Section 806.04(i), Section 808.01(a), and Section 808.02)." And pursuant to GUIDELINES found there, "examiners must provide reasons and/or examples to support conclusions." The Examiner has not provided sufficient "reasons and/or examples to support conclusions" as required by the MPEP.


Fifth, Applicant has added linking claims 116 and 117, which are believed to be generic. The linking claims must be examined with, and thus are considered part of, the invention elected. MPEP Sec. 809.

It is respectfully submitted that the restriction requirement is improper and should be withdrawn.

**APPLICANT CLAIMS SMALL ENTITY STATUS** The Commissioner is hereby authorized to charge any fees associated with the above-identified patent application or credit any overcharges to Deposit Account No. 50-0235.

Please direct all correspondence to the undersigned at the address given below.

Respectfully submitted,



Peter K. Trzyzna  
(Reg. No. 32,601)

Date: October 26, 2005

P.O. Box 7131  
Chicago, IL 60680-7131  
(312) 240-0824